

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 26.2.2007

CORAM

THE HONOURABLE MR.JUSTICE M.JAICHANDREN

SECOND APPEAL No.697 of 1996

Nagarathinam alias Mick Anthony Appellant/Plaintiff

Vs.

A.Devite Respondent/Defendant

* * *

Second Appeal against the Judgment and Decree dated 25.10.1995 made in A.S.No.17 of 1993 on the file of II Additional District Judge, Pondicherry, confirming the Judgment and Decree dated 24.12.1992 made in O.S.No.368 of 1992 on the file of I Additional District Munsif, Pondicherry.

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For Appellant : Mr.C.Selvaraju

For respondent : Mr.T.R.Rajaraman

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J U D G M E N T

The Plaintiff in the suit in O.S.No.368 of 1992 is the appellant in the present Second Appeal. The Plaintiff had filed a suit praying for a permanent injunction restraining the defendant from disturbing the peaceful possession and enjoyment of the suit property by the plaintiff, for cost and for such other suitable orders.

2. The plaintiff had stated that he was in peaceful possession and enjoyment of the suit property, which was his ancestral property inherited from his father. The plaintiff had paid the tax due to the Government and the tax receipts have been filed as documents in the said suit. The local Karnam of Pudupalayam in Pondicherry, had issued a certificate to the effect that the schedule mentioned property was in the occupation of the plaintiff. On 20.6.1992, the defendant, without having any right in the suit property, attempted to disturb the peaceful possession and enjoyment of the said property by the plaintiff and had tried to illegally commit trespass into the property.

3. The defendant had filed a written statement stating that the suit was not maintainable either in law or on facts. The defendant was not residing at No.7, Muthu Mariamman Koil Street, Pondicherry. He is a building Contractor undertaking to provide construction work and carrying on his business in Manjur, Chengalpet District, Tamil Nadu, where he has been living permanently for the past 15 years.

4. The defendant had further stated that the suit property is a vacant site enclosed by a brick compound wall with iron gate, which was under lock and key. The plaintiff is a neighbour of the defendant living on the northern side of the suit property. The defendant denies the claim of the plaintiff that the suit property is the plaintiff's ancestral property inherited from his father and that he is in peaceful possession and enjoyment of the same. The defendant had also denied that the plaintiff has paid the tax in respect of the suit property and that the suit property is not bearing any door number.

5. The defendant has further stated that the Karnam of Pudupalayam is not the competent authority to issue a Certificate with regard to the plaintiff's possession of immovable properties. The said certificate issued by the Karnam is a false one and it cannot be taken to be valid in law.

6. The defendant had further submitted that the suit property had originally belonged to one Mariassusai Anthoni Ammal Gnana, daughter of Arokiasamy and widow of Venmani Gnana by virtue of the Sale-cum-Donation Deed, dated 09.11.1967, whereby the suit property was donated in favour of one Gnana John Pierre Anburajan and Gnana James Chelladurai, both being the sons of Gnana Marie Joseph Anthuvan and John Marie Gnana alias Santha Gnana. From the date of donation, the suit property is in possession and enjoyment of the donees through their guardian during their minority and in their possession after they had attained majority. The Chitta extract and patta stand in their names and the tax assessed by the Revenue Department for the property had also been paid by them.

7. The defendant had further submitted that since the donees were too young and one of them is abroad and inasmuch as his sister and brother in law being too aged, the defendant was assisting them in their family matters. Since the plaintiff had attempted to make some constructions on the suit property claiming that a portion of his property was also lying in the suit property, the defendant had applied to the Survey Department for surveying the suit property and also paid the necessary survey charges, on 2.4.1992. The Survey Department had issued notices, dated 11.5.1992 and 16.6.1992, to both the parties and required them to be present along with the necessary documents relating to the title to the suit property. The plaintiff was not present as requested by the authorities of the Survey Department. It was only the plaintiff, who had attempted

to break-open the lock on the gate of the compound wall and it is not true that the defendant attempted to trespass into the property of the plaintiff, on 20.6.1992, and there is no cause of action for the suit. Under the above circumstances, the suit is liable to be dismissed.

8. Based on the averments made by the parties to the suit, the trial Court, namely, the First Additional District Munsif Court, Pondicherry had framed the following issues for consideration:-

- "a) Whether the plaintiff is in possession of the suit property?
- b) Whether the plaintiff is entitled for issuance of permanent injunction?
- c) To what relief are the parties entitled to?"

9. The plaintiff had examined himself as P.W.1 and marked Exs.A1 to A5. The defendant had examined himself as D.W.1 and marked Exs.B1 to B9.

10. With regard to the issue No.1, the trial Court had answered it in favour of the defendant stating that the plaintiff had not proved his possession in respect of the suit property by documentary or oral evidence. On the other hand, it was held that the defendant was in legal possession of the suit property. The trial Court had also held that the claim of the plaintiff that the suit property was a vacant site and it was his ancestral property and that he was in legal possession of the same, could not be supported by the documents filed in support of the plaintiff, namely, Exs.A1 to A5. Ex.A1, which is a certificate issued by the local Karnam, is a photo copy of the certificate, dated 30.4.1990. Exs.A2 and A3 are the tax receipts filed in support of the suit property. Ex.A4 is the Encumbrance Certificate marked by the plaintiff to show that the suit property coming under Patta No.1828 is in the name of the plaintiff. Ex.A5 is the Death Certificate of the deceased, father of the plaintiff.

11. According to the trial Court, the plaintiff had not filed any other document in proof of his possession of the suit property. It was found that during the course of cross examination, P.W.1./ Plaintiff has admitted that he has no other document to show that the suit property belonged to him and that he was in possession of the same. He had admitted that he was residing on the northern side of the suit property. The plaintiff has also admitted the existence of the compound wall besides admitting that he has not filed any document to show his title including the patta for the property alleged to have been occupied by him. Ex.A1 was issued after measurement of the property. No document has been filed in proof of the said claim and he has also admitted that the alleged Will in respect of the suit by which he has been bequeathed with the suit property, had not been filed before the Court. It was also admitted by the plaintiff that he had received two notices on 11.5.1992 and on 16.6.1992 from the office of the Survey and

Land Records. But he did not submit any document to show his title or his possession of the suit property. Even before the trial Court no other document has been filed by the plaintiff except A1 to A4, to prove his possession or to show that the suit property was an ancestral property. Ex.A1, which is a certificate issued by the Karnam, cannot be taken as a conclusive proof to show the legal possession of the suit property by the plaintiff. Exs. A2 and A3 are tax receipts and they cannot establish the possession of the suit property by the plaintiff.

12. On the other hand, Exs.B1 to B9 were marked to support the contentions raised by the defendant and that the defendant had examined himself as D.W.1. Ex.B1 is the Donation Deed executed in the year 1967. It reveals that the property concerned has been donated in favour of Gnana John Pierre Anburajan and Gnana James Chelladurai. Ex.B2 is the Tamil translation of the Donation Deed. The said document reveals that the suit property had been executed by Ghana Iyamperumal on 27.8.1915. Ex.B3 is the Chitta Nagal issued in respect of the suit property, patta No.1828 and R.S.No.160/1 pt and it is found standing in the name of Gnana John Pierre Anburajan and Gnana James Chelladurai. These documents prove that the suit property was standing in the name of the above mentioned persons, who are the donees of the suit property, and also confirm the pleadings in the written statement and the oral and documentary evidence of D.W.1. Ex.B.4 is the patta in respect of the suit property and B.5 is the tax receipt in respect of patta No.1828 for the year 1982. Ex.B6 is the tax receipt issued by the Municipality. Ex.B7 is the receipt for the tax paid to the Revenue Department by the defendant. Exs.B8 and B9 are the notices issued by the Survey Department on 07.5.1992 and 11.6.1992, respectively. The above mentioned documents filed by the defendant clearly shows that it is the defendant, who is in possession of the suit property, and that he has taken necessary steps to get the suit property measured by the Survey Department.

13. Based on the documentary and oral evidence, the trial Court had come to a conclusion that the plaintiff had not proved his possession or title to the suit property and, therefore, he is not entitled to a decree for permanent injunction as prayed for in the suit and, therefore, all the three issues framed by the trial Court have been decided against the plaintiff by a judgment and decree, dated 24.12.1992. Aggrieved by the same, the plaintiff had filed an appeal in A.S.No. 17 of 1993 before the Lower Appellate Court, namely, II Additional District Court, Pondicherry.

14. The main grounds urged by the appellant in the First Appeal are that:

"1. The lower Court had failed to appreciate the case of the plaintiff in its proper perspective;

2. The lower Court had failed to consider the documents filed by the plaintiff and marked as

Exs.A1 to A5;

3. The lower Court failed to appreciate the case of the plaintiff that the suit property is his ancestral property and that it is in his peaceful possession and enjoyment for more than 100 years."

15. The lower appellate Court had framed the following points for determination.

"1. Whether the suit property is the ancestral property of the plaintiff and that the plaintiff is in possession of the same?

2. Whether the plaintiff is entitled for a decree of permanent injunction?"

16. The lower appellate Court, while deciding point No.1, had found that the plaintiff had claimed that the suit property was the ancestral property being in the possession of his family for more than 100 years. The plaintiff had admitted in his evidence that there is no title deed available to prove that his ancestors were the owners of the suit property. Further, with regard to the plaintiff's claim of possession, there was nothing on record to show that his father had possessed and enjoyed the suit property and that he had inherited the same. The plaintiff had relied on Ex.A1, a xerox copy of the certificate, dated 30.4.1990, issued by the Karnam of Pudukalayam in Pondicherry, to prove his possession of the suit property. The original of Ex.A1 was not produced and no reasons had been given by the plaintiff for non-production of the original certificate. Ex.A1 had been issued by the author of the said document not on the basis of any deed/record or from his personal knowledge. It has been issued only on the basis of the enquiry made by him with the neighbours of the said property. It shows that the author of EX.A1 had no primary source of knowledge of the fact about which he had issued the said certificate. Therefore, Ex.A1 had no evidentiary value and it is not admissible in evidence to support the case of the plaintiff. Further, the Karnam, who is said to be the author of Ex.A1, had not been examined to prove the said document.

17. Further, from the evidence of P.W.1, it is clear that he had applied for measurement of his residential house lying on the north of the suit property and that in pursuance of the said application, Ex.A1 had been issued. The plaintiff in his evidence as P.W.1, has also admitted that he had not collected Ex. A1 from the Karnam, directly, and he had sent some one else to collect the same. The plaintiff has also not examined the person, who had collected Ex.A1 from the Karnam. In his evidence, the plaintiff has also admitted that he had apprehended that a portion of his property might have been encroached by the defendant and only to verify the same, he had applied to demarcate the boundaries. The lower appellate Court had found from the evidence of the plaintiff that the dispute

was not in support of the entire suit property but it was only a boundary dispute between his residential house and the suit property.

18. As far as Ex.B1 was concerned, the lower appellate Court has found that it was a French Notarial Sale-cum-Donation Deed executed in the year 1965, whereby, the suit property was purchased by one Mariassusai Anthoni Ammal Gnana, daughter of Arokiasamy and widow of Venmani Gnana and donated the same in favour of one Gnana John Pierre Anburajan and Gnana James Chelladurai, both being the sons of Gnana Marie Joseph Anthuvan and John Marie Gnana alias Santha Gnana. Ex.B.1 contains a declaration by the vendor that he holds the possession and enjoyment of the suit property, which he had delivered to the purchaser who, by virtue of the said donation, delivered the same to the donees. The mother of the donees is the sister of the defendant. The said Donation Deed, namely, Ex.B.1, being a French Notarial Deed, is an authenticated deed, which would go to prove that the donees got possession of the suit property by virtue of Ex.B.1. The Chitta extract and the patta, i.e. Exs.B.3 and B.4, would also show that the suit property stands in the name of the donees. Ex.B.5 is the receipt for payment of the Land Tax made by the defendant. Ex.B.6 is the receipt for payment of Municipal Tax for the suit property. Ex.B.7 is the application made by the defendant to the Directorate of Survey and Land Records and for payment thereof, as survey charges. Exs.B8 and B9 are notices, dated 11.5.1995 and 16.6.1995, respectively, issued by the Directorate of Survey of Land Records, which the plaintiff had admitted to have received. The plaintiff had admitted in his evidence that though he had initially requested for time to produce the documents to show his title and possession with regard to the suit property, he had not done so. Further, the plaintiff had failed to prove that the defendant had admitted to have committed trespass of the suit property, on 20.6.1992.

19. Further, there was no evidence either oral or documentary to show that the suit property is the ancestral property of the plaintiff and that it has been in the possession of his family for more than 100 years. On the other hand, the documents filed by the defendant, i.e., Exs.B.1 to B.6, would clearly prove the fact that the suit property is in the possession of the sons of his sister from the date of the donation made in their favour. Contrary to the claims made by the plaintiff, Exs.A2 and A3 would not establish the possession of the suit property by the plaintiff.

20. Based on the above reasons, the lower appellate Court had come to the finding that the plaintiff had not made out a case for the relief sought for by him, as held by the trial Court. Therefore, the appeal filed by the plaintiff before the lower appellate Court, in A.S.No.17 of 1993, was dismissed.

21. Aggrieved at the concurrent findings of the Courts below, the present Second Appeal has been filed by the plaintiff.

22. At the time of admission of the second appeal, the following substantial question of law was formulated:

"Whether the Courts below are justified in rejecting the relief for bare injunction against the defendant who has neither produced any title deed in his favour, as against documents filed by the plaintiff to prove the legal possession?"

23. The learned counsel appearing for the appellant herein has contended that the Courts below have erred in rejecting the documents filed in favour of the plaintiff/appellant as Exs.A1 to A5. On the contrary, the Courts below have given importance to Exs.B1 to B9 filed on behalf of the defendant/respondent. He had also submitted that the Courts below ought not to have gone into the other aspects, apart from the factum of plaintiff's possession of the suit property. The very fact that the Survey Department had issued notices to the plaintiff / appellant would go to show that he was not in possession of the suit property even though the documents Exs.A1 to A4 would clearly show that the plaintiff/appellant was in possession of the suit property. The Courts below have relied on Ex.B1 filed by the defendant to accept the claim of the defendant/respondent that the donors of the Gift Deed were in possession of the suit property and thereby came to the conclusion that the defendant is in possession of the suit property. The Courts below have also failed to rightly assess the oral and documentary evidence available on record filed in favour of the plaintiff / appellant thereby denying the reliefs prayed for by the plaintiff / appellant.

24. On a perusal of the judgment and decree of the Courts below and on an analysis of the findings based on the evidence available on record, this Court finds that both the Courts below have rightly found that there is no clear evidence shown on behalf of the plaintiff/appellant to prove his case of possession or of title to obtain the relief prayed for by him. Exs.A1 to A4 do not show sufficient support to the plaintiff's claim for possession of the suit property. Ex.A1 is the photo copy of the certificate issued by the Karnam of Pudupalayam in Pondicherry and it does not render sufficient support to the case of the plaintiff/appellant, as found by the Courts below. Exs.A2 and A3 are tax receipts, which cannot be taken as a conclusive proof either of title or of possession in favour of the plaintiff/appellant.

25. Even though, Ex.A-4, which is an encumbrance certificate, does not disclose any transaction during the relevant period it cannot be taken in support of the claim of the plaintiff/appellant that he was in possession of the suit

property to deserve the reliefs prayed for by him.

26. The learned counsel for the defendant has pointed out that the admission of P.W.1 with regard to the suit property clearly shows that he does not possess any document to prove his title or possession. On the contrary, the documents filed on behalf of the defendant, namely, Ex.B.1 to B.9, would go to show that, in fact, the defendant is in possession of the suit property. Further, on the aspect of substantial question of law involved in the present second appeal, the learned counsel Mr.T.R.Rajaraman has submitted that the second appeal cannot lie on the finding of fact or on appreciation of evidence on record by the Courts below. Even if the Courts below have wrongly appreciated the evidence available, it cannot be taken to be a substantial question of law to be raised before this Court by way of second appeal.

27. Further, the learned counsel appearing for the defendant contends that it is for the plaintiff to prove his case of possession of the suit property in order to obtain a relief of permanent injunction, as prayed for in the suit, and that the plaintiff has miserably failed in his attempt to prove that he was in possession of the suit property at the relevant point of time. On the contrary, the defendant has established that he was in possession of the suit property both by way of oral and documentary evidence.

28. In such circumstances, this Court is of the considered view that it is not a fit case to interfere with the judgment and decree passed by the Courts below, since there is nothing perverse or incorrect in their findings. Further, the Supreme Court in a recent judgment in GURDEV KAUR AND OTHERS Vs. KAKI AND OTHERS (2007 (1) CTC 334) has clearly held that the High Courts should not interfere in the mere findings of fact by the Courts below and it can only interfere if there are substantial questions of law involved.

29. For the reasons stated above, the judgment and decree made in O.S.No.368 of 1992 and confirmed in A.S.No.17 of 1993 is found to be correct and therefore, they do not invite any interference by this court. Accordingly, the above Second Appeal is dismissed confirming the concurrent findings of the Courts below. No costs.
ga/lan

Sd/
Asst.Registrar

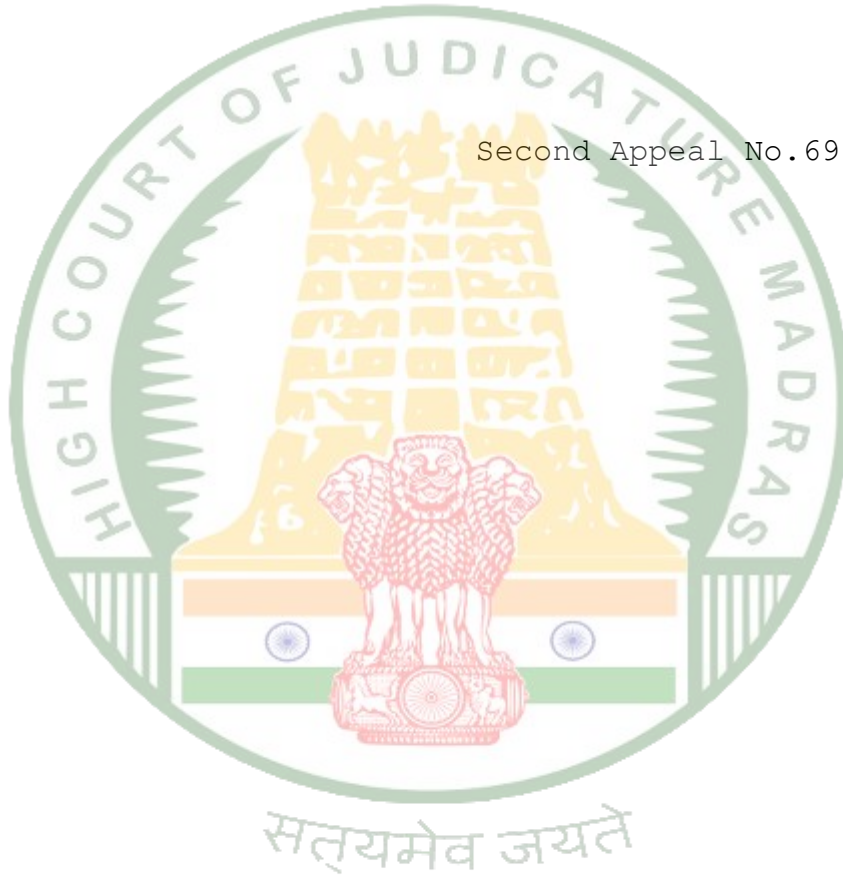
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To

1. The II Additional District Judge, Pondicherry.
 2. I Additional District Munsif, Pondicherry.
 3. The Record Keeper, VR Section, High Court, Madras
- + one cc to Mr. S. Mani, Advocate sr o. 11318

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